

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE
(POCSO), GONDIA.**

**Special C. No. 54/2021
(CNR No. MHGO010004962021)
State Vs. Tejas Chandrikapure**

ORDER PASSED BELOW APPLICATION (EXH-9)

This application for bail u/sec. 439 of Cr.P.C. has been filed by accused Tejas Chandrikapure who has been charge-sheeted by Police Station Gondia Gramin for offences punishable under sections 376(2)(n), 376(3) of Indian Penal Code and under sections 4, 5(j)(2), 5(l) & 6 of Protection of Children from Sexual Offences Act, 2012. The accused was arrested in Crime No. 112/2021 and presently he is in Jail.

2. Notice was issued to the Investigation Officer and Ld. Spl. P.P. calling to submit say. Accordingly, the Ld. Spl. P.P. and Investigation Officer filed their say opposing the grant of bail. The victim was also sent notice and she appeared before the court. In her say filed through her counsel, Advocate Bansod, the victim stated that she does not oppose the bail application since accused and his mother have promised that accused will marry her after attaining rightful age of marriage, since the child in her womb is of accused Tejas.

3. The prosecution case is that the victim is a resident of Gaddatoli, Gondia. Her father passed away and

her mother work as maid servant. The present accused used to come to her locality and therefore victim got acquainted with him in November, 2020. At that time accused had asked her mobile number and he started calling her on her mobile and used to give her promise of marriage. On 16/1/2021 when victim was alone in the house, accused asked her to come near Post Office and when victim came there, accused took her to the Canal at Sanjaynagar on his motorcycle, took her to the open ground and assured to marry with her and committed sexual intercourse with her. On 28/1/2021 also, accused came to victim's house, when she was alone and took her at Sanjaynagar and committed the same act. As a result of this, the victim became pregnant and when her mother took her to Dr. Adwani, he confirmed fact of the pregnancy. Thereafter, the victim lodged report against the accused to Police Station, Gondia Gramin.

4. Arguments were advanced by Advocate Upwanshi. He stated that according to the victim's statement, accused twice committed sexual intercourse with her but victim kept mum and this shows that it was consensual relationship. Ld. Advocate submitted that victim voluntarily surrendered to the accused and this shows that she was mature enough to understand what she was doing. Ld. Advocate submitted that victim has given say that she has no objection to grant bail to the accused and mother of accused has filed affidavit stating that she takes

responsibility of marriage between accused and victim and she has agreed to bear medical expenses of victim during pregnancy and looking to this, accused who is young be granted bail. In support of his arguments, Ld. Advocate relied upon the authority of *Sunil Mahadev Patil Vs. The State of Maharashtra decided by Hon'ble Bombay High Court in Bail Application No. 1036/2015 Dt. 3rd August, 2015*. Similarly, reliance was placed upon the authority of *Nitesh s/o Kashinath Ade Vs. State of Maharashtra decided by Hon'ble Bombay High Court in L.D.V.C. Criminal Application (BA) No. 74/2020 Dt.20/7/2020*. Ld. Advocate submitted that the facts of the authority of *Nitesh Ade* are identical as in the present case. It was submitted that accused is young and he is in Jail from 3/4/2021 and therefore bail be granted.

5. Ld. Spl. P.P. took objection to these arguments. He contended that the victim is a child and her statement shows that applicant deliberately and intentionally developed intimacy with her and committed repeated sexual intercourse by giving promise of marriage. He stated that consent given by victim is immaterial. Ld. Spl. P.P. submitted that if applicant is released, he will pressurize the victim. It was pointed out that another victim of the same age had levelled similar allegations against present accused for which Spl. Cri. C. No. 55/2021 is pending before this very court which shows that the accused is habitual.

6. Both these rival submissions were considered by me in the light of the case papers. The statement of the victim shows that accused got acquainted with her in November, 2020 and at that time he demanded her mobile number and after obtaining it, he used to call her daily and used to promise that he will marry with her. Her statement further shows that on 16/1/2021 also, accused himself called her and committed forcible intercourse assuring to marry with her. Therefore, there are repeated incidents by giving promise of marriage to the minor victim. The victim being of 14 years and her consent being given under inducing ,cannot be said to be free consent. The MLC report shows that the hymen was ruptured. Thus, there is sufficient material suggesting involvement of accused in the alleged offence.

7. I have gone through the authorities relied upon by Ld. Advocate for defence. In my opinion, in none of these cases there is any inducement given to the victim and they were cases of pure love affair between victim and accused. Therefore, they are not applicable to our case. The offence is repeated sexual assault and very grave. If accused is released, there is possibility that he will tamper with evidence or pressurize the witnesses.

8. I have considered the say given by victim and affidavit filed by her mother stating that she takes the responsibility for medical expenses of victim during

pregnancy. The victim has stated that she has no objection to grant bail since accused has promised to marry with her, after attaining majority. However, while considering bail application where there are serious and grave allegations of repeated sexual assaults on a minor, such consideration of accused promising to marry with victim are irrelevant. The victim is of 14 years and there is much time for attaining the age of marriage. This has been emphasized by Hon'ble Supreme Court in the case of *Aprna Bhatt Vs. State of Maharashtra in Cri. Appeal No. 329/2021*. Similarly, in the authority of State of *M.P. Vs. Madanlal 26(2015) 7 SCC 681* Their Lordships have observed that "*Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error*". Therefore, it has to be said that promise of marriage, if any, given by accused to the victim during pregnancy of bail application appears to be an attempt to tamper with prosecution witnesses. In the light of the facts on record and considering the seriousness of the offence and further the fact that another victim in Spl. Case No. 55/2021 has also levelled similar allegations against accused suggesting that accused is in the habit of committing similar act, it is not in the interest of justice to grant bail to the accused.

9. I would like to stress that whatever observations are made while disposing of bail application have no bearing on the final decision of the case which will be decided on merits. With this, I proceed to pass the following order.

ORDER

1. The application (~~Exh-9~~) for bail stands rejected.

Gondia.
Dt. 22/06/2021.

(S.D.Tulankar)
Addl. Sessions Judge (POCSO),
Gondia.